



DEPARTMENT OF PLANNING AND BUILDING

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MEMORANDUM

TO: Agriculture Liaison Advisory Board

FROM: Murry Wilson, Environmental Division
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DATE: August 3, 2009 (*prepared July 21, 2009*)

SUBJECT: Grading Ordinance Revisions

Background

The National Pollutant Discharge Elimination System (abbreviated NPDES), is a federal program under the Clean Water Act. Within California, this program is administered by the State Water Resource Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs). Phase-Two of the NPDES program requires that the County obtain coverage under a SWRCB general permit.

In order to get coverage under the general permit, the County prepared a Stormwater Management Program (SWMP – or “swamp”). The SWMP outlines specific measures that the County will take over a five year period to minimize illicit discharges into stormwater. One of the primary contributors to impaired water quality is sediment from construction sites. The SWRCB is requiring local jurisdictions to implement measures to reduce harmful pollutants from entering waterways, including measures associated with construction and grading activities.

Summary of State Mandated Changes

- Amend the Grading Ordinance to incorporate General Construction Permit standards
 - This applies to projects which involve more than 1 acre of site disturbance
 - Applicants will need to prepare a Stormwater Pollution Prevention Plan (SWPPP – or “swipp”)
 - The RWQCB already requires that these measures be undertaken, so there will be minimal changes to existing procedures.
 - RWQCB has a “conditional waiver” of these standards for agricultural uses
- Amend the Land Use Ordinances to incorporate Municipal Separate Storm Sewer Systems (MS4) standards
 - This applies to *discretionary* permits for certain types of uses – for example:
 - Automobile service stations / repair

- Restaurants
 - Single family residences on 25 percent + slopes
 - Tract developments with 10 or more units
- Long-term maintenance of facilities is required
- These amendments are not applicable to agricultural uses
- Enforce the new standards
 - Fines are to be increased to match Clean Water Act / Porter-Cologne Act fines
 - Each day a violation exists is to be considered a separate violation
 - Inspection program is expanded to include rainy season and stormwater inspections
 - Standards are modified to be more straightforward and understandable, where we have had past misinterpretations (i.e. misuse of the agricultural exemption).

The reason for these changes is to 1) Reduce/eliminate discharges from construction site; and 2) Reduce/eliminate post-construction discharges.

Summary of County-Proposed Changes Affecting Agricultural Grading

1) Threshold for Grading Permit

Currently the threshold for grading permits is 50 cubic yards only when one or more of the following occurs:

- Excavation is more than two feet deep
- Cut slope is greater than five feet in height and steeper than 1.5:1
- Fill is more than one foot in depth where it is proposed to support a structure
- Fill is more than three feet in depth where it is not proposed to support a structure

The proposal is to change the threshold to 50 cubic yards in all circumstances. Additionally, the threshold is proposed to be 20 cubic yards where alteration of a watercourse is proposed.

If the proposed project is less than 50 cubic yards and does not result in alteration to a watercourse, it would not constitute “grading” under our ordinance. Therefore, this work would not require a grading permit from the County.

Reference: Section 22.52.060A

2) Grading on 30 percent slopes

In the Coastal Zone, grading is prohibited on slopes of 30 percent or greater. To do so, a Variance is required. In the inland area there is no such prohibition.

The proposal is to prohibit grading on slopes of 30 percent or greater in both coastal and inland areas. Crop production and grazing would be exempt from this limitation. Additionally a Variance can be requested to waive this requirement.

Reference: Section 22.52.060B.2

3) Exempt grading

“Exempt grading” is exempt from County grading permits as of right. The owner has a responsibility to check with other state, local, and federal regulatory agencies on any other permitting requirements. The owner also has a responsibility to follow appropriate practices to avoid erosion and sedimentation. There is no need to check in with the County, fill out a form, or pay a fee. Exempt grading includes the following:

- *Routine Maintenance* – Maintenance of existing, legally established roads where the capacity is not increased (i.e. road width and length). This exemption also applies to maintenance of other infrastructure, such as irrigation lines and agricultural drainage channels.
- *Ongoing Crop Production and Grazing* – Grading for crop production/grazing purposes in areas where existing crop production or grazing has occurred within the last five years.
 - Activities are limited to preparing a field / irrigation
 - Area where grading occurs must have been subject to agricultural practices for at least one of the last five years.
 - Must comply with Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG) practices
 - Does not include roads or ponds.

Reference: 22.52.070B

4) Agricultural exempt grading

There are currently no agricultural exemptions in the Coastal Zone. In the inland portion of the county, there is a system of four levels for agricultural exemptions:

1. Exempt – but NRCS FOTG practices are encouraged.
2. Exempt – but NRCS FOTG practices are required.
3. Exempt – only if applying through the Alternative Review Program.
4. Not Exempt – grading permit required.

The proposal is to eliminate the level system and replace it with an agricultural exemption and the alternative review program. Projects that do not comply with either program will require a grading permit. The agricultural exemption is most similar to the procedure for Level 2 grading, with some modifications.

To qualify for an agricultural exemption, a form must be filled out before the work is undertaken and submitted to the Department of Planning and Building for verification. The form is intended to document that an agricultural exemption was granted and to ensure that the agriculturalist is familiar with the regulations and standards that they are responsible to follow. This is anticipated to be similar to the process we currently use for agricultural exempt buildings. Agricultural exemption will apply to:

- Crop production and grazing (new fields) with slopes of 20 percent or less – note that ongoing production on existing fields is covered under the general exemption
- Installation of new water pipelines
- Creation of a “small” reservoir – one acre-foot or less – which is entirely below grade (i.e. no dam).

The owner will still be responsible to comply with NRCS FOTG practices, to ensure that no erosion/sedimentation occurs. The landowner is also responsible to ensure that appropriate permits have been obtained from local, state, and federal agencies as applicable.

Agricultural grading is meant to offer agriculturalists an alternative to the permitting procedures for those activities which are least likely to cause erosion and sedimentation impacts.

The intent of the additional procedures is to discourage misuse of agricultural exemptions by non-agriculturalists, which are the most common code enforcement cases for unpermitted grading. Often times this unpermitted grading results in severe erosion and sedimentation impacts and involves coordination with other jurisdictions, such as the Army Corps of Engineers and the California Department of Fish and Game. The Agricultural Commissioner's office has previously cited misuse of agricultural exemptions as a threat to the continuance of the agricultural exemption program.

The proposal would also involve introducing the agricultural exemption to the Coastal Zone, where it does not presently exist.

Reference: Section 22.52.070C

5) Alternative Review Program

Level 3 exempt grading under the current inland grading ordinance allows NRCS or one of the County's two Resource Conservation Districts (RCDs) to review, approve, and inspect certain agricultural grading proposals in lieu of the County. This program does not presently exist in the Coastal Zone.

Similarly to the agricultural exemption, the proposal is to require that a form be filled out with the County Planning Department before initiating site work. Within 60 days of completion of the form, the applicant will need to apply to NRCS or an RCD for alternative review. For roads and ponds, prior consent from the Agricultural Commissioner will be required in order to document that the road/pond is appropriately sized for the existing or proposed agricultural activity.

Alternative Review is meant to provide additional oversight and assurance of erosion/sedimentation control for agricultural grading that would have a greater potential for erosion/sedimentation control impacts. By processing through NRCS/RCD, agriculturalists are afforded a more collaborative permitting process, which generally reduces the time and cost when compared to the grading permit process.

The following is an example of projects that would qualify for the Alternative Review Program:

- Crop production and grazing (new fields) on slopes between 20 and 30 percent – note that ongoing production on existing fields is covered under the general exemption.
- Hillside benches on slopes of 30 percent or greater.
- New roads serving fields and/or agricultural exempt structures, when these roads are less than 16 feet in width – with additional qualifiers.
- New ponds that involve above grade work or are more than one acre-foot in capacity.
- Restoration/enhancement of watercourses.
- Trail/recreation enhancements.

Again, the purpose of this program is streamline the process for legitimate agricultural improvements and to discourage misuse of these exemptions for non-agricultural development.

This proposal would also introduce the Alternative Review Program to the Coastal Zone, where it does not presently exist.

Reference: Section 22.52.080

6) Unpermitted Grading

Grading which occurs in violation of the grading ordinance standards is proposed to no longer be eligible for the alternative review program.

Reference: Section 22.52.090C.3.b

What We're Looking for from ALAB

The public review draft of the proposed ordinance amendments is what staff will be presenting to the Planning Commission in autumn. It is not written in stone. The Planning Commission will modify the ordinance as they see fit, based upon input from advisory agencies and public testimony.

In addition to presenting the public review draft to the Commission, staff would like to present comments from ALAB. We anticipate ALAB's comments to be focused on the following:

- Introduction of the agricultural exemption and Alternative Review Program to the Coastal Zone.
- The procedures for agricultural exemption and the Alternative Review Program. Examples for discussion:
 - *Is filling out a form with the County prior to initiating site work an appropriate process?*
 - *Is there a better way to meet the agriculturalists' needs without creating a loophole?*
- The various qualifying standards for exemptions. Examples for discussion:
 - *Is compliance with NRCS FOTG practices always a necessity?*
 - *Is a road width of 16 feet sufficient for agriculture? Should this threshold be raised or lowered?*
 - *Should the thresholds for "ongoing" field/grazing improvements be modified?*
 - *Should exemptions for agriculture be limited to a certain slope?*
- Assigning each agricultural practice to an exemption category. Examples for discussion:
 - *Should roads fall under the agricultural exemption instead of the Alternative Review program?*
 - *Should an additional practice be added to the agricultural exemption of Alternative review program?*
 - Note – please refer to the attached table to assist you in considering these questions.

Attachments

1. *Summary of Agricultural Exemptions* table – showing which agricultural practices fall under which exemption.

2. *Proposed Ordinance Amendments*

- a. *Stormwater Management Ordinance Revisions*
- b. *Solid Waste Management Ordinance Revisions*
- c. *Grading Ordinance Revisions* – Most requirements affecting agriculture are in this document. Applicable sections are specifically referenced in this memo.
- d. *North Coast Area Plan Revisions*
- e. *New Definitions*
- f. *Section Reference Updates*

3. *Draft Agricultural Exemption Form*

Additional documents are available on the County's website:

- Existing Grading Ordinances
 - <http://www.sloplanning.org>
 - Scroll to "General Plan, Ordinances..." on the left column.
 - Click on the drop down where it says "Land Use Ordinances"
 - Under Title 22, select Article 1 through 8, then scroll to Chapter 22.52.
 - Under Title 23, click the link and scroll to Section 23.05.020 et seq.
- Stormwater Management Program
 - <http://www.slocounty.ca.gov/PW>
 - Scroll to "Stormwater Management Program" on the left column.
 - Click on the drop down where it says "Stormwater Management Program"